

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DOUGLAS DERN

Plaintiff,

v.

Case No.

Complaint

Jury Trial Demand

TIMOTHY E. BAXTER & ASSOCIATES, P.C.

Defendant,

**COMPLAINT FOR VIOLATION OF
FAIR DEBT COLLECTION PRACTICES ACT**

Preliminary Statement and Introduction

1. This petition is an action for statutory and actual damages brought by an individual consumer, Doug Dern (Plaintiff) against Timothy E. Baxter & Associates, PC (Defendant) for violations of the Fair Debt Collection Practices Act 15 U.S.C. §1692 *et seq.* (FDCPA).

Jurisdiction/ Venue

2. Jurisdiction of this case arises under 15 U.S.C. sec 1692k (d).

3. Venue is proper in this District as Defendant transacts business here and the communication as well as the conduct of Defendant upon which this complaint is based occurred here.

Parties

4. The Plaintiff, Douglas Dern, is a natural person, and was at all times a resident in the State of Michigan. The Plaintiff is a "consumer" as termed by 15 U.S.C. 1692a (3).

5. The Defendant, Timothy E. Baxter and associates is a Law Firm engaged as "debt collectors" as defined by and within the meaning of the FDCPA 15 U.S.C. sec 1692a(6) and is engaged in the business of collecting debts. The Defendant's address is PO Box 2669, Farmington Hills MI 48333.

6. On or about the beginning of November 2008 the Defendant corresponded by first class mail to the Plaintiff alleging the Plaintiff owed a debt in the amount of around \$6143.00.

7. On November 15th, 2008 within the dispute period under the FDCPA the Plaintiff mailed a Notice of Dispute and Request for Validation to the Defendant (See Exhibit A).

8. As of December 15th of 2008 the Defendant did not respond to the request for validation.

9. On December 22, 2008 the Defendant sent the Plaintiff another request for payment along with a settlement offer (see exhibit B).

10. The Defendant failed to comply with the FDCPA by validating the Debt within the 30 days and violated the FDCPA by sending the Plaintiff a communication to collect debt without providing validation to the Consumer.

11. The alleged debt is for primarily consumer debts.

12. The Defendant continued to collect the debt but did not provide the requested validation until sometime in July 2009. Therefore the Defendant knew or should have known they could not achieve standing at the time they were attempting to collect debt.

13. The Defendant failed to provide verification and validation of the alleged debt is a violation of 15 U.S.C. *et seq.*

14. The conduct of the Defendant is harassing a constitutes violations of the FDCPA.

15. On or about December 22, 2008 when the Defendant contacted the Plaintiff with the letter (Exhibit B) they violated the FDCPA because they attempted to collect debt after a dispute was requested and failed to do so.

Plaintiff is entitled to and hereby demands that this cause be tried by a jury.

WHEREFORE, the Plaintiff prays a judgment be entered against the Defendant by this Court for following:

1. Injunctive and corresponding declaratory relief establishing the forgoing conduct of the Defendant as unlawful, enjoining Defendant from continuing to engage in said conduct and grant equitable relief as may be appropriate.
2. Award Plaintiff actual damages.
3. Award punitive damages.
4. Award federal statutory damages.
5. Award compensatory damages for emotion distress.
6. Award reasonable attorney fees and costs of this litigation.
7. Grant such other relief as the Honorable Court deems just and proper.

Dated: 12/13/2009

/s/Doug Dern
Doug Dern (P64567)
Attorney for Plaintiff
11636 Highland Rd. # 107
Hartland MI 48353
810-632-9160
Dddern@aol.com

1-810-632-9160 Office
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11/15/2008

Timothy E. Baxter & Associates
PO Box 2669
Farmington Hills MI 48333-2669

Re: Elan Financial Service
File No. E-30968 **Notice of Dispute and request for validation**

To Timothy Baxter & Associates, PC;

Please be aware that I dispute the above debt. I request validation and verification in writing of the above account you have for Elan Financial services within 30 days of today's date of 11/15/2008.

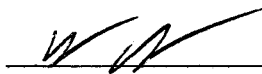
Sincerely



Doug Dern

Proof of Service

I declare that I sent this letter by first class mail to the above mentioned Debt Collection Agency on 11/15/2008.



Dated: 11/15/2008

EXHIBIT A

TIMOTHY E. BAXTER
HUGH G. PALLAZOLA
TRACI L. KERN

P.O. BOX 2669
FARMINGTON HILLS, MI 48333-2669
www.baxlaw.com

TELEPHONE (248) 553-1155
FACSIMILE (248) 553-0055

December 22, 2008

Douglas Dern
4300 N Milford Rd
Highland MI 48357

SETTLEMENT OFFER!

RE: Elan Financial Services dba US Bank
National Association ND

-vs-

Douglas Dern

File No. E-30968

Current Balance: \$6,143.46

30% OFF

YOUR CURRENT BALANCE

Dear Douglas Dern:

Our client has authorized us to offer you an opportunity to settle your account for the discounted amount of \$4,300.43, which is 30% off your current balance. If you wish to take advantage of this offer, please do the following:

1. Send us a lump sum payment in the sum of \$4,300.43; and
2. Make sure that your lump sum payment will be received by us by **12:00 (Noon) on January 15, 2009.**

For your convenience, payment can also be made by check by phone, for free, or mail in a certified check or money order. You may call our office **TOLL FREE** at **866/431-8274** and we will be happy to assist you to authorize the payment of this lump sum by phone. You may also visit our website at www.PayBax.net, 24 hours a day, 7 days a week.

If you choose to mail in your payment, please do the following:

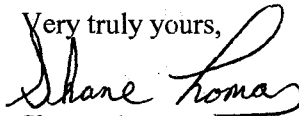
1. Make your check payable to **Elan Financial Services** in the amount of **\$4,300.43**
2. Write your file #**E-30968** in the lower left corner of your check.
3. Mail your check to: **Timothy E. Baxter & Associates, P.C.**
PO BOX 2669
Farmington Hills MI 48333
4. **Please include a copy of this letter with your payment.**
5. Once your check clears the bank, this will constitute a full and final settlement.

Please note that the collection process will continue until the settlement amount is received by our office. **If you cannot make the entire lump sum payment in the amount sum of \$4,300.43 by the above date, please call our office with another settlement offer and we will be happy to present it to our client.**

In the meantime, I thank you for your cooperation and look forward to resolving this matter with you.

This communication is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

Very truly yours,



Shane Thomas
Paralegal Debt Collector

(dsettle7)

Paula

EXHIBIT
B